

Gum 7. (Amended) An additive according to claim 5, wherein the combination of monosaccharides is a galactomanane.

Splitting?

8. (Amended) An additive according to claim 1, wherein the modified natural gum is modified guar gum.

B2 9. (Amended) A filled composition of conglomerate building material selected from gypsum and special mortar, that comprises a fraction selected from among a cement fraction, a gypsum fraction, and an aggregate fraction, *1/2* and 0.05-1.2% by weight of the additive defined in claim 1.

Still contains gypsum

10. (Amended) A filled composition according to claim 9 comprising 0.2-0.9% by weight of the additive.

REMARKS

Claims 1-3 and 5-10 as amended are pending in the application. Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attachment is captioned "Version with markings to show changes made."

In the Office Action mailed July 12, 2001, the Examiner has required restriction of Claims 1-10 on the basis of into one of the following inventions:

- I. Claims 1- 8, drawn to an additive for gypsum and mortar; and

II. Claims 9-10, drawn to a composition comprising gypsum or mortar and the additive of Group I.

The Examiner has based his decision on the propriety of the requirement imposed in this Action, upon determination that the claims directed to the additive (Claim 1) is unpatentable.

Conveniently however, the Examiner has not imposed a rejection on Claim 1, nor has the Examiner concomitantly provided Applicants the requisite time to respond to such a substantive holding. At the least, the Examiner's action would be a deprivation of due process to Applicants, as a substantive determination as to patentability carried with it the entitlement of Applicants to a full shortened statutory period of three (3) months in which to respond, by contrast, the present Action carried with it a shortened period of one (1) month, which is the customary period provided in the case where a Requirement for Restriction is imposed without more.

Moreover, Applicants view the Examiner's Action in the commentary with regard to the patentability of the claim as a veiled attempt to ensnare Applicants into a colloquy on the record that could only prejudice Applicants in the long run. Applicants submit that the substantive patentability of a claim can play no part in the determination of the propriety of a Requirement for Restriction. The touchstone of "single general inventive concept" is not to be considered literally in this circumstances, as, until a substantive Action on the merits involving an examination and a re-examination takes place, the determination of "inventive" status cannot be determined. Applicants refuse therefore to substantively engage on this issue and instead, maintains strenuously that Claim 1 defines inventive subject matter until substantive examination has taken place and is dispositively concluded.

For this reason alone therefore, Applicants conclude that there is a single inventive concept in accordance with 37 CFR 1.499 and that therefore the Requirement for Restriction is inappropriate and must be withdrawn.

yes, I have!
look at the restriction
please

NOT TRUE
THIS only
requires you to
elect a group.

what?!

its permissible
under PCT
rules
sure -

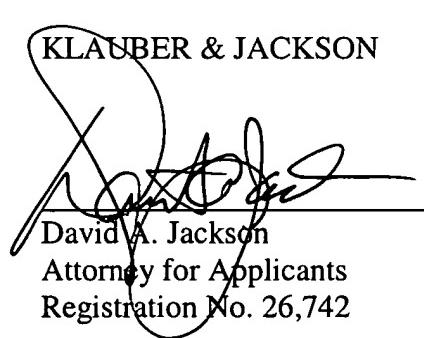
Concurrently herewith, Applicants have reviewed and amended the claims and submit herewith Claims 1-3 and 5-10 which direct themselves to the subject matter of the original claims as presented. To the extent that the claims submitted herewith correspond in classification to those initially submitted at filing (Applicants were not advised by the Examiner as to the exact classification of these claims), Applicants hereby elect to prosecute the claims directed to the additive, however with strenuous traverse.

It is Applicants' position that unity of invention clearly exists, inasmuch as the additive of Claims 1-3 and 5-8 is subsumed within Claims 9 and 10. It is clear in such circumstance, that a thorough examination of the subject matter of Claims 1-3 and 5-8 would include the search and review of the same component as it exists within the composition of Claims 9 and 10. Moreover, the general subject matter of Claims 1-3 and 5-8 is coextensive with Claims 9 and 10, so that the search strategy for all of the claims would not impose an unreasonable burden on the Examiner. For this further reason therefore, the Requirement as it may pertain to the claims as amended, is believed to be in error, and withdrawal thereof is requested.

In summary therefore, Applicants request withdrawal of the outstanding Requirement for Restriction, and entry and favorable consideration of the claims as amended.

Respectfully submitted,

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